Testimony of Special Education Equity for Kids in Connecticut (SEEK)
To Committee on Education
March 15, 2023
Presented by Attorney Andrew Feinstein

Chairman McCrory, Chairman Currey, Ranking Members Berthel and McCarty, members of the Education Committee,

My name is Andrew Feinstein and I am the Legislative Chair of Special Education Equity for Kids of Connecticut (SEEK). SEEK is an organization of parents, professionals, advocates and attorneys working to support the needs of students with disabilities in the state. I appear today to testify on a number of bills before you.

We are enthusiastically in support of S.B. 1200 and H.B. 6883. I will start with S.B. 1200. Section 1 makes clear that the huge influx of COVID stimulus money should not count in calculating the per pupil cost for purposes of a district's claim to excess cost reimbursement. The bulk of the stimulus money went to the most underfunded districts. If that money were counted in calculating the per pupil cost, these districts would be deprived of needed excess cost reimbursement from the state.

Section 2 modifies the prohibition of dual instruction passed last session to make it clear, consistent with federal law, that a student's IEP could require a teacher to teach both to a live class and to a student with a disability online simultaneously. We would recommend that this language be broadened to include students on homebound or hospitalized instruction. Such students, who may or may not be students with disabilities, could profit from maintaining contact with their classes during temporary periods of hospitalization or homebound instruction.

Section 3 reauthorizes and expands the mandate of the task force on the provision and funding of special education, which I co-chair. The added tasks include determining how independent evaluators can be assured the right to observe a student in school, looking at the age at which a young child's disability needs to be classified as one of the eleven disabilities in the IDEA, whether specific student-to-teacher ratios should be set, as they are in New York, and other related topics. As soon as a co-chair is appointed, we are eager to move forward with this task force. While these additional tasks are important, the issue of funding of special education remains paramount.

Section 4 guarantees an interpreter for a non-English speaking parent at a PPT meeting, something already guaranteed by federal law, but often not provided. Passage of this provision will reinforce the need for such translators. We presume that some of this will need to be done through on-line services.

Section 5 makes clear that, when a student enters the lottery for a charter school, the fact that the student qualifies for special education shall not enter into consideration. This provision is needed to prevent discrimination against students with disabilities seeking to attend charter school. Because charter schools are in Alliance Districts, this provision will serve some of the most in-need students of color in the state.

Section 6 brings Connecticut law on restraint and seclusion up to the standard proposed by Senator Murphy in the federal Keeping All Students Safe Act. Seclusion is banned. Time outs are defined to ensure that the student, while separated, is not locked up, but rather benefiting from behavior and therapeutic supports. Physical restraint is not allowed if it is counter indicated by the student's medical or psychiatric needs. Physical restraint cannot be a planned intervention under a student's IEP. It is only to be used in emergency situations. Psychopharmacologic agents can only be used under doctor's orders. Where physical restraint is used, the school must convene a meeting with parents within five days and provide a detailed explanation of why the restraint occurred. These provisions apply both to regular public schools and to approved private special education placements. Because restraints are disproportionately used on black boys and students with disabilities, school district reports to the state on restraints must be disaggregated by student demographic groups. The bill is clear that time out rooms are intended to give the student an opportunity, with appropriate supports, to use adaptive coping and regulating skills so that they can de-escalate. We do not want to see kids put into a room without any support for regulation, or else their behavior will continue to escalate as they go deeper into fight/flight. There needs to be an actual plan in place to help the student soothe and calm down. Critically, the bill creates a private right of action for actual damages sustained as a result of improper restraint or seclusion.

Section 6 is a significant and much needed step forward. Restraint and seclusion do not serve any educational purpose. The behavior that leads to such aversives should be an alarm bell that therapeutic responses are needed. Worse that being educationally unsound, restraint and seclusion traumatize children and make their behavior worse in the long run. Connecticut should take the lead in eliminating seclusion and restricting the use of physical restraint.

Section 7 extends the effort to expand the use of school-based health centers. Such centers can be life savers for children in need, particularly those children who lack private medical and psychological caregivers.

Section 8 requires the Department of Education to post, in lightly redacted form, the corrective action ordered in response to state complaints. These complaints are one of the primary ways in which the state carries out its obligation to ensure that local school districts comply with the requirements of the IDEA. Publication of decisions will enhance compliance and will let other districts and parents know what actions are violative of the law.

Section 9 extends the prohibition on reprisals against school employees who advocate on behalf of students with disabilities to those doing so as part of a 504 meeting. Teachers and other school staff need to feel safe in fighting for the future of the students they teach.

SEEK is strongly in support of S.B. 1200.

H.B. 6883 is another strong and needed piece of legislation. Section 1 defines transition services, designates a transition coordinator for each district, and establishes an Office of Transition Services in the Department of Education with broad powers to ensure the

effectiveness of transition services provided by districts. Section 2 creates a mechanism to ensure that all state agencies involved in transition to adulthood work together to provide strong transition services to students with disabilities. Section 3 establishes a training program for transition coordinators and section 4 mandates that transition coordinators complete the training. School personnel were wholly unprepared to provide the transition planning and transition services that were added to the responsibility of schools twenty years ago. The state of knowledge has increased significantly over that period of time. Those on the front lines in Connecticut schools need to learn the options and how to address the needs of each individual student who qualifies for transition services. The first four sections of this bill meet that need.

Section 5 expands eligibility for students with disabilities until the end of the school year (June 30) of the year in which the student turns 22. Connecticut previously provided such services until the end of the school year in which the student turned 21. Then, the Federal Court of Appeals, in *A.R. v. Connecticut State Board of Education*, 5 F.4th 155 (2d Cir. 2021) ruled that Connecticut had to provide services through a student's 22nd birthday. This provision will ensure that students receive a full year of transition services, not one interrupted by the happenstance of their birthday. Sections 6, 7, 8, and 10 conform the transition bill of rights to this new age limit.

Section 11 creates a competitive grant program for local school boards to create public transition programs. Section 12 tasks SERC to review public transition programs.

Section 13 again requires interpreters for non-English speaking parents but goes further to require all relevant documents to be translated into the primary language spoken by the parent. Further, the local school district is obligated to inform parents of students with intellectual disabilities of the laws relating to becoming a conservator. The proposal also mandates the school district to inform parents of the availability of mediation, to be provided through a new Office of Mediation Services.

Section 14 requires both notification to the state when a student becomes eligible for transition services and detailed notice to the parent. Further, two years before the student ages out, the school needs to bring in outside service agents to start to arrange a seamless transition to adult services. Sections 15 and 16 place new obligations on DDS and BRS to support students aging out. Interestingly, section 17 requires the Auditors of Public Accounts to study the cooperation between state agencies. Interagency cooperation is a challenge in many areas. Perhaps the Auditors can reduce the difficulties in this area.

Section 18 creates an Office of Mediation Services to promote and facilitate mediation of special education disputes. Currently, mediation is the single element of special education enforcement and dispute resolution that is working well in Connecticut. Elevating its role, as this bill does, is probably not necessary, but is also not harmful. Those of us practicing in this area resolve the vast majority of our cases through mediation. Presently, there are three first rate mediators -- Kirsten Dovenberg, Ann Paul, and Cynthia Gilchrest – who make the system as effective as it is. The key to an effective mediation system is high quality mediators. The training program for mediators in section (c) should specifically include participation by parent-side special education attorneys. Section 19 expands the parties that may seek mediation.

Section 20 is critical. In Connecticut, the burden of proof to demonstrate that a proposed program is appropriate rests on the school district proposing the program. This makes sense because the school district has all the information and employs all the individuals who provide education for the child. Yet, for some inexplicable reason, the burden of production is placed on the parent challenging the program. The parent needs to go first. Section 20 changes this to place the burden of production on the school district. This change may well shorten hearings because, once the board concludes its case in chief, the parent can move for a directed verdict that the board failed to demonstrate that it offered an appropriate program.

Section 20 also permits any party to file for mediation. It is not entirely clear whether such request binds other parties as well. Under current law, both sides need to agree to go to mediation.

Subsection (g) requires the Department to publish on its web site information on how to request and prepare for a hearing. While parents should be permitted to proceed to a hearing pro se, the reality is that pro se parents rarely prevail and are often overwhelmed by the process. We would worry about language encouraging parents to prosecute hearings without legal assistance.

Section 21 is also critical. The State of Connecticut promises to ensure that local school districts comply with the IDEA, in exchange for the Part B money from the federal government. Yet, the Department of Education does little to audit, investigate and monitor the activities of local districts. Section 21 would correct that. The IDEA is a complex statute. Whether out of ignorance or out of intent, we see districts violating provisions of the law with some frequency, but with no sanction. This legislation should change that.

Section 22 adds training on special education and 504 law to the initial training of new educators. This training is needed.

There are 7 other bills on the agenda of today's hearing. We wish to make a few comments on those:

S.B. 1197 appropriately promotes dual enrollment programs. In other states, there has been some controversy over whether the full panoply of a student's IEP needs to be implemented at a course for high school credit conducted at a college. The answer from the federal Office of Special Education Programs is yes and that policy should be reflected in this bill.

We support S.B. 1199. Many students with disabilities require close relationships with school staff to succeed. A teacher who comes from a similar background, a teacher who looks like the student, is far better for the student with a disability. We commend Senator McCrory for his persistent and aggressive efforts to diversify Connecticut's educator workforce.

H.B. 6879 deals with teacher certification. While we have a general teacher shortage, we have an acute special education teacher shortage. The Commission to Modernize the Educator Workforce ought to have a specific charge to deal with special educators and the Commission should have experts in special education appointed to it.

Section 1 of H.B. 6880 answers the demand of some for more parent's rights in public education. Parents have the right to know the curriculum used with their child and should be able to address concerns at a local board of education meeting. With that said, the curriculum of a public school should not be a matter of popular vote. It should contain the elements needed to develop an active and articulate citizen. That involves hearing various points of view, being exposed to literature, history, civics, and social studies both within and outside the western canon. The fact that a subject may make a student or a parent uncomfortable is no reason to remove it from the curriculum.

Section 5 of H.B. 6880 tells the Department of Education to develop a plan for a remote learning school for students unable to attend school in-person due to a medical condition of vaccination status. There is enormous value to attending a physical school with other students to gain social skills and learn how to function in society. So, while the remote learning school may serve an important backstop function, we should be very restrictive in permitting students to participate in such a school.

We have substantial concerns with Section 6. Vouchers can serve to undermine public education in a profound way. The provision only tells the Department of Education to study the fiscal impact of such a voucher program. If we are going to study a voucher program, and there are many varieties of voucher programs among the states, we need to look at all aspects of such a program, including, and especially, its impact on students with disabilities.

Section 9 creates two advisory committees, one of parents and one of teachers. We, of course, support amplifying the voice of parents.

H.B. 6881 expands on the law governing paraeducators. Section 5 ensures that paraprofessionals are fully trained on the IEP of each student with a disability. This is an important addition. Paraeducators are the backbone of the special education system. Raising the status, professionalism and pay of paraeducators is an important objective.

H.B. 6882 is aimed at mandate relief. The bill is a minor step forward. Much more needs to be done to eliminate obsolete and unnecessary mandates. The recommendations of the work group convened by Patrice McCarthy provides a road map for doing so.

We want to say a word about H.B. 6884. Good education for students with disabilities requires good, dedicated teachers. We have seen an exodus of teachers, and particularly special education teachers, over the last few years due to low pay, bad working conditions, physical threats, and societal scorn. H.B. 6884 addresses these issues. It deserves enactment.

H.B. 6884 also authorizes the development of play-based education. We need to make the curriculum more attractive to all children, and particular to those children with attentional issues. Creating play-based curriculum could be a major step forward in addressing the needs of students with disabilities.

We thank you for the opportunity to testify. I am happy to answer any questions and SEEK wants to continue to work with this Committee.